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09/642,828	08/22/2000	Karel Van den Berg	8553/189	9417

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EXAMINER

HAYES, BRET C

ART UNIT

PAPER NUMBER

3644

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/642,828

Applicant(s)

VAN DEN BERG, KAREL

Examiner

Bret C Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23-29 and 31-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-29 and 31-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

1. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Objections***

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).
3. Misnumbered claims 57 – 79 have been renumbered 31 – 53.
4. The previously renumbered claims along with the renumbered claims of the Amendment filed 3 April 2003, Paper No. 6, were correctly renumbered because prior to the Preliminary Amendment filed 22 August 2000, Paper No. 1.5, which misnumbered claims 3 – 30 as 29 – 56, there were no claims in the application.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

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6. Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The recitation of "said reservoirs have similar configurations" is unclear. There is nothing in the base claim to suggest that the reservoirs have dissimilar configurations and the intent of the claim is unclear.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 31 – 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,740,757 to Smeester.

10. Re – claims 31 – 33, 39, 40, 43 – 45, 51 and 52, Smeester discloses a column comprising a central axis surrounded by a plurality of reservoirs, having similar configurations, feeding troughs, at least one metering device for dosing feed from the reservoir to the trough, the column being provided with a framework located around a central axis, to which framework the feeding troughs and reservoirs are fitted; the column comprising partitions disposed between the feeding troughs, wherein the feeding troughs each comprise a metering device connected to the framework; the column comprising a metering device disposed between the reservoir and the

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feed troughs, at least one storage room and a metering device, wherein the metering device comprises mixing means; the column comprising identification means and being mobile.

11. While Smeester does not disclose wherein the cross-section of the framework is substantially circular, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the framework be substantially circular, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

12. Further, while the troughs of Smeester do not abut one another, they can be seen to be side-by-side from Fig. 2 and to further close the troughs would fall into a rearrangement of parts of the device of Smeester, which would have been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

13. Re – claims 34 – 38 and 41, Smeester discloses the invention substantially as claimed. See paragraphs 10 – 12 above. However, Smeester does not disclose the feeding troughs, reservoirs and partitions being detachable from the framework and a weighing device explicitly.

14. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feeding troughs, reservoirs and partitions be detachable from the framework, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

15. Further, Smeester discloses that it is known in the art to give desired dosages which may be particularized, as set forth at column 3, line 11 and it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to use any measuring device, such as a weighing device, in order to "particularize" the dosages.

16. Claims 48 – 50 are rejected under 35 U.S.C. § 103 as being unpatentable over Smeester in view of 4,361,590 to Wojcik.

17. Smeester discloses the invention substantially as claimed. However, Smeester does not disclose separation means for removing materials unfit for consumption, the means comprising at least one electromagnet.

18. Wojcik teaches the use of an electromagnet in the analogous art of food processes for the purpose of removing tramp metal.

19. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an electromagnet in order to remove materials unfit for consumption as taught by Wojcik.

### ***Double Patenting***

20. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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21. Claims 42, 46 and 47 are rejected under the judicially created doctrine of double patenting over claims 1 – 17 of U. S. Patent No. 6,371,047 B1 to van den Berg since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a movable weighing device, a rotatable metering device, a drive unit

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

22. Claims 23 – 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 17 of U.S. Patent No. 6,371,047 B1 to van den Berg. Although the conflicting claims are not identical, they are not patentably distinct from each other because van den Berg discloses a semi-circular shape, Fig. 1, about a central vertical axis 5 and to make the invention circular in its entirety would be obvious to one having ordinary skill in the art at the time the invention was made.

### ***Response to Arguments***

23. Applicant's arguments filed 3 April 2003 have been fully considered but they are not persuasive.

24. Re – claims 31 – 53, whether the central axis exists as an actual part of the device, such as a shaft, or as a theoretical, yet discernable, part of the device, such as the center of the

framework, would be a matter of obviousness to one having ordinary skill in the art at the time the invention was made and it would have further been obvious to one having ordinary skill in the art at the time the invention was made to make the framework circular, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

25. Further, it unclear how the Smeester reference discloses the feeding troughs being “anything but side-by-side” – taken from the Remarks section, page 7, lines 1 and 2. While the troughs of Smeester do not abut one another, they can be seen to be side-by-side from Fig. 2 and to further close the troughs would fall into a rearrangement of parts of the device of Smeester, which would have been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

26. Regarding the argument that, [s]everal rejections under 35 U.S.C. 103...[being] all flawed because they fail to disclose substantive evidence which would lead to the combinations set forth, or, where only one reference [being] cited, there is no showing of a suggestion or motivation to modify the teachings of the reference,” page 7, lines 6 and 7, there was 103 a rejection given to claims 4 – 8 and 11 citing Smeester and case law regarding the detachability of portions of the framework, cited again regarding claims 34 – 38 and 41 above, and the rejection of claims 18 – 20 citing Smeester in view of Wojcik, cited again regarding claims 48 – 50 above, wherein Wojcik does teach the removal of foreign bodies in feed using an electromagnet. Regarding the first, Smeester and case law, the law obviates the need for any suggestion or motivation to modify as being obvious to one having ordinary skill in the art at the time the



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invention was made. Regarding the second, Smeester in view of Wojcik, since Wojcik is an analogous art, that of preparing foodstuffs, one having ordinary skill in the art at the time the invention was made would be lead to combine the references, as the motivation is removal of foreign bodies using an electromagnet, which is what Wojcik teaches in the analogous art.

27. Regarding the argument directed at the Double Patenting rejections, given the disclosure of van den Berg, US Patent No. 6,371,047 B1, including Fig. 1 and, from the claims, a framework (obviously at the least semi-circularly “disclosed” from Fig. 1) about a fixed vertical central axis (positively disclosed), a plurality of troughs, a metering device and a weighing device, would indeed improperly extend the “right to exclude” already granted in the patent.

### ***Conclusion***

28. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306-0553. The examiner can normally be reached Monday through Friday from 6:00 am to 6:30 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306-4159. The fax number for this group is (703) 305-7687.

bh

5/16/03

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